
ICANN Transcription

Modifying gTLD Consensus Policies with ICANN Org, GNSO Council and SG/C Chairs

Wednesday, 04 May 2022 at 13:00 UTC

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NATHALIE PEREGRINE: Good morning, good afternoon, good evening, everybody. Welcome to the modifying gTLD consensus policies with the GNSO Council, stakeholder group and constituency chairs, as well as ICANN Org call taking place on Wednesday 4th of May 2022.

This call is taking place in a Zoom webinar room with GNSO Council members, stakeholder group and constituency chairs, as well as ICANN Board and ICANN Org members are panelists. Panelists may activate their mics and use a chat once they have set the chat drop down option to everyone. This will ensure your messages are accessible to all and are captured in the Zoom recording. Reminder to panelists that any individual chat message sent to an attendee will be visible to the other panelists.

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a warm welcome to attendees on the call who are silent observers, meaning they do not have access to their microphones nor to typing in the chat. This call is being recorded. Please remember to state your names clearly before speaking and to speak slow. Recordings will be posted on the GNSO master calendar, the GNSO Council wiki and circulated on the GNSO Council mailing list.

And as a reminder, those who take part in the ICANN multi stakeholder process must comply with expected standards of behavior. Thank you. And over to you, our GNSO chair, Philippe Fouquart.

PHILIPPE FOUQUART:

Thank you, Nathalie. Good morning, good afternoon, good evening, everyone. Welcome to this modifying consensus policy paper discussion. I'll just use this introductory minute to put this into the context of our ongoing work at Council. We've got several tracks on this topic where some overlap but that are worthwhile pursuing separately.

We have this discussion, and we'll have this discussion on the modifying consensus policy paper. On one hand, we have the ongoing dialogue with [inaudible] with us, but also the dialogues—plural—with the Board both past and present on rec seven, for example, as well as the ODA reviews that we've undertaken.

So with all this, staff, and for the benefit of Councilors, but also observers, have developed a paper that sort of spells out the various threads. And I'm sure we could have a pointer in the chat

on that paper. I would encourage Councilors and others to have a look at it in the email archive of Council.

So that's really the overall context that we'll take forward within this discussion. And thanks, again, Theresa and your team for putting together that paper that you shared in December. So we had a small team who reviewed that. And before I hand over to Sebastien, who led that team, I'll just hand over to you, Theresa, to give us that context for your perspective, I guess.

THERESA SWINEHART:

Wonderful, Philippe. And thank you so much. And it's good to see everybody online, so to speak, and hope everybody's families are well. Just wanted to thank you, first of all, for convening today. And just for this thoughtful conversation. We'd shared the paper in the spirit of contributing to discussions, and Philippe, to the work that's going on in order to look at what opportunities might exist, to improve things, or evolve things from that standpoint as we're all experiencing through all the work that we're doing and the benefit of that.

And so, just look forward to the conversation here, look forward to continued dialogue. We'd sent also, I think, some follow on questions to the exchange that we've been having. And let's see where this conversation goes. So just thanks, everybody, for your time. I think this is an important area that we can all evolve together in order to make all this important work as effective as possible. So thank you.

PHILIPPE FOUQUART: thank you, Theresa. So with this, looking forward to this in terms of improvements, both formally to the PDP but hopefully also [how we conduct our] work and the way we engage with this staff in general. So Sebastien, would you like to take us through the findings of the small team and take us forward with this?

SEBASTIEN DUCOS: Sure. Not sure there's findings yet, but I'm more than happy to hold hands here. So firstly a disclaimer for me, maybe less for the others. But I whilst I'm happy to hold the baton and pass on the mic on this one, I am far from being an expert in all our policy inner works. And so I will be not only very happy to let other people speak, but please don't hesitate to raise your hand to ask questions, to intervene. I'm only here to pass the mic.

So we received indeed—for those who weren't on the small team, are a bit less familiar, we received your letter, Theresa, shortly before ICANN 72. So much so that we decided to push it and defer looking at it seriously after ICANN because it was only a few days before, and met up and pretty quickly all scratched our head first asking where this was coming from, if it was going from staff or it's coming from the Board, who was looking for answers and what sort of delays and etc. And so we had an initial meeting and conversation with staff on this. I found out that indeed it was as described before, work that was envisioned, but there was no precise timelines. And we just wanted to open that conversation.

And so reviewing it in a small team, what became pretty apparent very quickly was that we believe that this process, instead of being an exchange of letters and spending time trying to second guess

what the others were suggesting or wanting, or etc., that we should have a conversation sitting around the table, which in these days of pandemic is not very easy. But this is the format. And it's taken a few weeks a month, probably more than initially expected when we answered to your letter, Theresa, to be able to organize this, but just proves everybody's very busy.

And so now, the few first questions that arose from our debates within the small team and other discussion with councilors was what was really envisioned by this in the sense we're trying to fix something, we're trying to make sure that it's better handled than it is handled today. But was there a view to fixing this through a change of policy, change of methodology in the way we organize ourselves, a change of etc.? And so that was one of the first questions. Talking about process, so if it was a question for the Council to review processes and etc.

There was also questions—and this is a recurrent theme that is going back in Council, without enlarging the remit of the Council, the responsibilities of the Council, but to also get a better vision, I think, of where things are going once accepted by Council. And in the context of the various aspects that you've initiated in your paper, Theresa, so when policy start stepping on other policy, where and when things need to start and stop. And other people will have much better ways to speak about that than I do at least.

Now, I don't need to make a long speech. So basically, we decided we believe the easiest way was to have a conversation. We are now finally opening this conversation on the mic. I don't think I have any more interesting things to put here. Let's have that conversation. And let's start it in earnest.

On this, Theresa, unless you had other aspects to discuss or other points that you wanted to have before we throw it to the discussion, otherwise, I'll just pass the mic on to Steve. I see a note from Theresa.

THERESA SWINEHART: No, let's have a discussion. I look forward to it.

SEBASTIEN DUCOS: Thank you very much. So Steve, it's all yours.

STEVE DELBIANCO: Thanks, Sebastien. First, it looks as if this document has not changed since we last had our call, right. This is the October document, it's the same. And I continue to believe that pages 10 through 14, which list several very helpful steps, there are six helpful steps in the table, the document that was done on the 11th, they're still helpful.

And when one defines the process, how to take something forward, sometimes we should first look at the nature and extent of what it is we want to take forward. Because that may suggest that a very lightweight and easy process would suffice.

So I would propose that the six improvements on pages 10 through 14, that they may not be everything we need. But as far as they go, they are all intended to be helpful to the community, Board and Org. They're not mandates so much as they are reminders, enablers. Staff could implement all of them, I believe,

without a significant amount of formal involvement in process. Because staff is changing a template, for example, they're adding a reminder in the template for what might be needed. They're adding a reminder in the communications between the Council and the Board.

In other words, I see it all as helpful additions. And if that's the extent of what we want to do to improve the consensus policy, we don't need a very heavyweight process to do that. So I would ask, Sebastien, your reaction, Theresa, everyone's reaction to whether we can do this rather simply and make it easier to implement rather than make this more than it needs to be. Thank you.

SEBASTIEN DUCOS: Thank you, Steve, for the question. And so for those following, this was the October 22 letter as posted by Marika, the second link that Marika just posted in the chat.

And this is where I need to recognize my gross incompetence. Yes, all those solutions seem simple enough and an easy to implement. I would like to hear from those who have gone through these processes, where that sort of game of chess, the third [inaudible] after you move here is going to bite us.

And there was overnight an exchange. Kurt, who I believe is not on the call, couldn't participate just for time reasons from Australia, but was noting that indeed, there's things that in the live action of a PDP and particularly in an EPDP, or in the phase one in the context that he was describing, where there's short timelines, and a willingness to try to sort of go through the exact points that are in

the charter, not go too far in, particularly not too fine in topics that are divisive and will bring long argumentation, that the general consensus or the general feeling of the members of the PDP was not to brush the problem aside, but try to make sure not to get bogged into it.

And then there's other PDPs where we might be treading into waters that are [inaudible] by an existing PDP, but where the exchanges are not within the remit or the competency of the PDP members present where the expertise from—and he took, for example, the process around transfers that are—that it's a problem that registrars handle every day and the rest of the community is a bit of oblivious to. And so having in the same team, in the same PDP the people that know everything about the topic of the day, plus all the ancillaries, might not be practical, might be just complicating things too much.

So whilst everything can be charted [inaudible] and making sure that everybody is around the table, it might not be the best way to move forward. And I'm trying and hoping that Kurt will recognize his words here. I'm paraphrasing more than I'm bringing up my own. Anybody else here to save me? Philippe, please go ahead.

PHILIPPE FOUQUART:

Thank you, Sebastien. And speaking just as an individual and possibly to rephrase what Steve said, but I think we need balance at this point, and it's exactly the sort of conversation we need to have. I don't know exactly whether all of these improvements, 6 to 14 are the exact ones. That I don't know. But that sort of conversation is exactly what we want to do, not overreact and

throw the baby with the water bath as it were, and over complicate the PDP for something that could be fixed easily, and vice versa.

We don't want to address significantly substantive work at Council. We want to make sure we draw the line at that exact point. And especially these days, I have to say, with the way we conduct work remotely, sometimes a bit difficult to work without safeguards. But just to say that, yes, proportionality is what we want to here, that there are a number of reasons why there might be issues perceived with the outputs of the PDP. And sometimes not at all related with the nature of the work because of the timeline, because of a number of other reasons. It's not for that that the process needs to be fixed heavily. I guess that's what I'm saying. Hope that's helpful. I'll see that Marika has her hand up. Back to you.

SEBASTIEN DUCOS: Go ahead, Marika.

MARIKA KONINGS: Yeah, thanks, Sebastien. And I don't want to preempt the conversation that the Council will have on this upcoming meeting in relation to the paper that we also put into the chapter the PDP improvements were, at least from a staff perspective, we've tried to bring together different conversations that are taking place, which this one is one of them. And exactly, I think aligned with what Steve suggested, we've tried to categorize some of the specific suggestions that have already been made in this kind of category of what are things that are easy to do that don't require

changes to the process or procedures and may have a significant impact. Or if they don't work, that they can also, of course, be discarded again.

And then there may be others where further work and conversation is needed, or where changes to the procedures do turn out to be necessary, where of course, then some additional planning needs to happen. So that is a bit, at least from a staff side, is the suggestion we've made on trying to track this conversation and also be able to capture specific suggestions that are made. A number of those already included that came out of the paper.

As Philippe of course mentioned, maybe those are not the ones that the group wants to move forward with or in addition to those, there are other items that the group wants to consider. So from our side, we're taking notes and capturing what's being discussed here. And of course, as well, the next conversation that the Council will have on kind of looking at, is this a helpful approach, does this allow bringing the different threads together and keeping the oversight as well as allowing for proper planning for those aspects that do require more time and effort and planning?

Because as said, some of the ones here are easy to do. But there are maybe some aspects that the community wants to look at that do require a more significant review and a community effort to kind of work through those. So just wanted to share that, and as said, the paper was shared in the chat as well for those interested.

SEBASTIEN DUCOS: Thank you, Marika. I see Jeff's hand.

SEBASTIEN DUCOS: Yeah, thanks. I think part of the reason why a lot of us are quiet on this call is because when you're talking about modifying a consensus policy, two things at least occurred to me. Number one is that every case is going to be different, right? We have no idea how or why or when things will need to be modified in the future. And I worry that we may suffer from too much process. So while it may sound really good to start tinkering with it to enable us to have a process to amend it, we may, by having the formal process, actually limit the way that we make changes, especially if changes need to be relatively quick.

So I know that's kind of ironic in a sense, we're trying to come up with a process to enable us to do it. But in essence, the process we come up with could actually be more of a limiter than an enabler. And so that's one of kind of the concerns I have.

The second thing is, when we talk about consensus policies, I mean, that is the most sensitive of sensitive topics, because any consensus policy, including official changes, are automatically enforceable through the contracts with the registries and the registrars. And having a process other than going through a new PDP is potentially dangerous. Because there were protections put into the original PDP for the contracted parties, since they blindly agreed to follow whatever is documented in a capital C, capital P consensus policy.

So I think that's why a lot of us are being sort of quiet in the sense of that it really is on a case-by-case basis. And when you're changing, you're changing contractual provisions, essentially, for registries and registrars and forcing them to comply with it. So I don't know. That's kind of what at least I'm struggling with. And I don't know if others are as well, but I thought I would sort of voice that out loud. Thanks.

SEBASTIEN DUCOS: Thank you, Jeff. If I may ask a follow up question. Just to name it, because it was named, it was referenced in the letter, the EPDP phase one and rec 27, is that the limit that didn't quite break the system and everything else will fall into, or you assume and see that this is going to happen more and more, and maybe we should look at a way to ease this process?

JEFFREY NEUMAN: Well, I think it will happen more and more as technology and things evolve. And as we get more consensus policies, right? When we started this experiment, for the longest time, we had only one consensus policy, that was the UDRP. And then even up until there were new TLDs, there were very few consensus policies.

And granted, the last five years or so, or six years, we haven't had really any—except for the EPDP stuff, haven't had too many. But yeah, I mean, I think as we get more PDPs and as we get more results, we're going to have to have changes.

But remember, not all changes to a PDP is a capital C, capital P consensus policy that impacts the contracts. So if you want to talk about a process of amending consensus policies with a small c and small p that don't impact the contracted parties in the same way, then maybe that's much easier.

But as long as we're talking about the capital C, capital P things within the picket fence, then that's why people just are sort of clamming up a little bit, because the current protections I think the contracted parties likely feel are appropriate, and messing with them in any way is not an easy concept to grapple with.

SEBASTIEN DUCOS: Thank you. I'll remain neutral, but as an individual from the contracted party, I fully agree with you. Karen, I see your hand up.

KAREN LENTZ: Yes, thank you, Sebastien. Like Jeff, I have been around long, long enough to remember when there were three or four, five consensus policies. So it was very easy to remember what they were and what was in all of them. But we're not in that place now, and we'll continue to have more and the policies will likely continue to interact with each other.

And so part of where this paper came from was questions sort of kept coming up as to how can policies properly be changed, and when the policies are the result of the multi-stakeholder process. And so to the point that Jeff was just making about each case being a little different, I think that's right. And I think it's section

three in the paper, which is talking about, specifically, when a new policy affects existing policies.

And that can happen in two ways. Either it's explicitly identified by the working group at the time of making recommendations, or it's only discovered later. But however that happens, even though that the circumstances may be different, I think we thought it was important that people understand roles, who should be doing what if, for example, the IRT identifies, oh, this recommendation impacts an existing policy and that's not discussed at all in the report, then what is the proper place to have that discussion?

You know, I don't think—well, [I want to stick to the answer.] But it's important that as Org, as the GNSO, as all of us, part of the ICANN model, that we have a good sort of sense of guidance for those cases on who should be doing what. Thanks.

SEBASTIEN DUCOS: Thank you. Jeff, please go ahead.

JEFFREY NEUMAN: Yeah, thanks. And I think Karen, you're absolutely right. And that happened right in this with the EPDP. But I think we're getting to a point now where we're trying to encourage ICANN staff and others to participate in the PDPs so that hopefully, we won't have the situation where there isn't a realization until it gets to an IRT that something that's being decided by the original PDP group impacts policy.

I think we're starting to get your team's involvement, which has been great, in more PDPs. And I think that's really one of the things we may have to look to ICANN staff to help us, to identify those things, not in the IRT or ODP, as Philippe says in the chat, it's for you guys to help identify it during the PDP.

That could have eliminated the problem in the EPDP. And I think it will eliminate a lot of the problems going forward. So I think more involvement in the original PDP by those that are going to implement is really a better solution than coming up with a one size fits all sort of process to modify existing policies when it's discovered later.

That's not to say—it's not going to catch everything. But I think—I know Karen, I know you and your team, and I have worked closely with them, more closely these last few months as being the liaison. And I know you, you all will spot those issues, if you have more involvement and if you feel like you have more flexibility to contribute to the process, which I think personally, you should have that freedom. Thanks.

SEBASTIEN DUCOS:

Thank you, Jeff. [inaudible] I thought you were going to say that also, Jeff, you mentioned throwing back to a subsequent PDP also questions that are unresolved in and may not be resolved. I wanted to note also a point in Kurt's letter overnight, that technically, the Council is not here to develop policy, to do policy. It's just there to check that the process is followed. And so asking the Council to go and judge things afterwards and whatever is not [fair to the Council to the process.]

So without, again, throwing more and more PDPs on the table, because they tend to exhaust everybody and resources, but how much does that need to be the tool? How many other smaller, easier, faster tools do we need to include? Tomslin.

TOMSLIN SAMME-NLAR: Thanks, Sebastien. Actually just wanted to follow up with what Jeff just proposed on staff participating more on the PDPs, because I thought it sort of addresses some of the concerns Kurt had on email regarding skill sets in the PDP team unable to look at or resolve modification conflicts, because if all the skill sets to even identify that it will potentially modify another policy, so where staff participates, then, and that is identified, then that gives the group the opportunity to seek out those skills if required and are not in the team to sort of resolve this during the PDP team's work before final recommendations or a report is made. Thanks.

SEBASTIEN DUCOS: Thank you, Tomslin. I see comments made in the chat. As Jeff noted, a number of people are feeling like not talking too much. But we have plenty of time. So in the interest of time and conversation, if those comments in the chat can also come to the mic, that would make it easier for all, I think. Any reaction to Tomslin's points?

Good, well, maybe then I could put Karen or Theresa on the spot and have maybe comment about staff participating in these in a more official manner. Obviously, staff participates quite a bit, and

if only points and helps find and etc. But on participating in a more substantive and official manner. Do you have views?

THERESA SWINEHART: Yeah, some thoughts. And Karen has some thoughts as well.

SEBASTIEN DUCOS: Theresa, did you want to go first? No. Okay. Yes, to the point about staff engagement in PDP. So this has sort of taken different forms, I guess, over time. The EPDP phase one, I believe, was the first instance where there was kind of an officially appointed liaison from the Org or two of them.

But that role sort of existed informally before, where we would, if we had the bandwidth to do so, have somebody within the Org who was appointed to track and follow what was happening in a PDP with the view of what do we need to plan for or expect from the Org side in terms of being ready for implementation and posing what questions we had.

I think the liaison role has generally worked very well, at least for us, in terms of understanding the issues under discussion and kind of the rationale for things as well as being able to provide an implementation perspective or an operational perspective, or data or whatever it is to be useful to the PDP. And that's something that we're continuing to work out.

One of the things that my team has worked on over the last, I don't know, six months is kind of a manual for GDS, whoever is appointed to be a liaison to a PDP, these are your responsibilities.

These are the things that you should be doing. And it's looking at how to properly engage within a PDP, always mindful that it's a bottom-up stakeholder process and our role is to provide information or perspectives.

And so will finally add that we expect to be able to sort of share some of that in terms of our guidelines for how we've defined the role. And also currently in terms of PDPs that are going on now, we do have liaison to the IDN EPDP, who's quite active in that as well as in the—Isabelle who's on the call who is liaison to the transfer PDP. So very appreciative of the comments on that topic. Thanks.

SEBASTIEN DUCOS: Thank you. I see in parallel a conversation going on in chat between Jeff and Chris, if you want share—you're already sharing in the chat. But, Jeff?

JEFFREY NEUMAN: Yeah, I can just, I guess, sort of summarize. I think that we should be focusing more on the process of or the ability for us to discover the conflicts during the PDP process rather than afterwards. Focusing on an after the fact policy which we know is going—every case is going to be different, is almost an impossible task.

But if we can formalize the staff role, the liaison role to the PDP and we can formalize that their role is to specifically look for those conflicts, then I think that that would be much more productive than us trying to come up with a whole very complicated after the fact process, which by the way, could also have—capital C capital

P consensus policies could have a downstream effect of imposing new contractual requirements on the contract the parties. More focus on PDP 3.0, or 3.1, or whatever we're doing on different roles and how we best discover those conflicts, I think, to me is more productive. Thanks.

SEBASTIEN DUCOS: Thanks, Jeff. So and again, correct me if I'm wrong here. But my understanding of what was the question in the first place, and again, EPDP, phase one, most of the problems and the conflicts were known by everybody before the discussion even started. So it was so chosen not to spend too much on it, because there was a lot of work and time pressure to get work done to resolve GDPR issues. But it's not like we discovered late the problems and the conflicts with the policies. These things were known far ahead. I see Lars.

LARS HOFFMANN: Thanks. Just one quick note here on following up from Karen and the discussions going on in the chat and the point that Jeff raised earlier. I agree that the best time to identify any issues is during the PDP when the working group is together and the community can kind of react to anything, whether it's staff that catch this or it's another community member, it doesn't matter. The more smart minds are around, the better, I think.

But I think while we should aim to catch as much as we can during the PDP process, I think there will be always something during one process or another that slips through the cracks as it were.

And so I think having consistent and predictable procedures on how that can be addressed, I think, it's just helpful for everybody, for staff as well as supporting an IRT, it's really helpful to ask the staff to say, hey, we have discovered something, here's the five steps we need to take in order to come to a solution, whatever that may be.

And if I can just for one second put on my old political scientists hat, I appreciate the differentiation that Jeff made with capital and lower letters, consensus policies. Maybe another one—I know that constitutional lawyers and political scientists love a procedure, but maybe there is value in looking at whether these things can be handled differently, right. If something impacts the contracts, maybe the GNSO wants to develop a slightly different process, how that can be looked at if something comes up during implementation versus Something that does not affect the contracts, but it's still something that affects consensus output of a PDP. Yeah, I have no solutions at the moment. I'm happy to think about those. But I just wanted to add that to the discussion. Thank you.

SEBASTIEN DUCOS: Thank you very much. Jeff, your hand is up next.

JEFFREY NEUMAN: Yeah. So, Seb, I want to respond to what you said. And then a small response to Lars. So Seb, when you said that the conflicts were identified during the PDP process, and you didn't address them. But I thought you did set forth a process to address them,

right? Because we put something in the UDRP one, if I remember correctly, or maybe that didn't, maybe we—there were processes put in place when you discovered that there were conflicts. It's not as if you just ignored them.

And that's the right thing to do. If you discover, oh, crap, this may affect something else, it's during that process that then you should say, okay, we can't deal with this now, but this is how we're going to deal with it in the future, after this PDP. That's what should have happened.

And Marika points out rec 27. I think that was the right thing to do. You point out what the conflicts are. But then you have to take the next step as to say, okay, well, the EPDP group is not going to deal with these. But the Council then should say, all right, through the liaison to the PDP, that these are some issues that we know are going to affect impacted policies. So how do we want to handle them? And then the Council tackles it at that point.

Again, I just, we have so many processes in the ICANN world that everything gets slowed down to a crawl because it has to be this many days' notice and it has to be representative. And it has to do this and it has to do that.

And while we think we're actually doing better by accounting for things and putting in more process, we've become an organization that's unable to do anything. And I apologize if that just sounds blunt. But look at the last six years, right?

So again, I think we should stop talking about the what ifs, things that are discovered after the fact. And let's focus on how to

discover these during the fact, during the discussions. And if we put someone from ICANN staff, that liaison and make it their specific role that they have to do these things, I am confident that 99% of those issues will be discovered. And then it's up to the PDP and the GNSO Council to work together as to how that gets addressed in the future.

But anything further, developing these more—even the CPIF has gotten so complicated and so process oriented that nothing can happen for years. And I think we need to go back at some point and really limit or grant more flexibility to some of the things that we have rather than now piling process upon process.

And Chris is saying why not do both? Well, we couldn't do both. Sure. But let's focus first on identifying it and how we better do that. Right now it seems like we're doing it backwards on focusing on what happens if there is a conflict. let's go back and see how we can fix not having that conflict in the future. Thanks.

SEBASTIEN DUCOS: Thanks. You said that you had also a short answer for Lars.

SEBASTIEN DUCOS: Oh, yeah, I did. Oh, a separate policy for consensus—it's the same response, right. Now we're really getting bureaucratic and now we're really trying to account for every situation. And I mean, I agree—how do you disagree with the concept other than to say that we're going to spend a lot of time coming up with a process that's going to just put more delay on a lot of things? Thanks.

SEBASTIEN DUCOS: Thank you. Becky, your next up.

BECKY BURR: Thanks so much. I just want to say something really, really simple, which is I'm not supportive of a lot of process. In fact, I think the simpler we can make things the better. However, the Board needs to know clearly if there is an intention to change policy, and we did have an experience where the Board really just didn't have enough clear information about what was intended. So whatever decision, policy, however [inaudible] what you're doing so that the rest of the community and the Board knows exactly what's been proposed.

SEBASTIEN DUCOS: And if I can ask a follow up, beyond the example of rec 27 that was just used, beyond that, because obviously, there will be an intent to change—at that point, there won't be any signal as to what that change might be in what direction, because the discussions are not [yet had.]

BECKY BURR: Well, I mean, even if it's just in the final report, so you go through the whole process and then you specifically and affirmatively say in the draft report that people are commenting on, it will have the effect of changing consensus policy to be X.

So the rec 27 is the one that comes to mind for me. But I was concerned that it wasn't clear to the rest of the community. And the Board was unclear about the intent. And, in fact, we got messages that said, no, we're not intending to change the policy.

So I think having a very explicit conversation before the draft report goes out so that the community is put on notice that the policy recommendation will have the effect of changing consensus policy is a critical piece of this, because without it, without that explicit articulation, it's hard for the Board to know that the community was aware of the implications of the policy recommendations.

SEBASTIEN DUCOS: Thanks. That's clear, at least to me. Jeff.

JEFFREY NEUMAN: Yeah. Thanks, Becky. But couldn't that have also been solved having the Board liaison be more participatory in the activities of the PDP? Like, why was it only when the Board is deliberating at the very end that you felt like we need more clarification?

You know, I think that's one of the problems with our community, frankly, is that the Board feels like it can't, in a lot of cases—and that is changing a little. But historically, the Board has felt like they can't say anything, they can't do anything until the very end. And I think that's a problem. That's the problem of not how do we fix things after the fact, but how does the Board feel comfortable enough to discover those, or how does the Board discover those issues, or the community discover those issues? It's not a Board

issue, it's a community issue. How does the community discover those issues during the process? And then how does it get addressed during the process?

I've always hated the separation between the Board and the community, because I think that it has ended up slowing so many things down. The liaisons, I think from the Board now are much better. And that concept, because they're participating more. So I think this is going to get better over the years. But I still think all of this can be handled during the PDP process, as opposed to focusing on another process after the fact.

BECKY BURR:

If I could just add, I think that's totally fair. I do think that there's some cultural changes that are sort of underway. But it's going to take time because not everybody in the community is actually pleased with the Board being more participatory in the policy development process. And respecting the line between the job of the Board in terms of adopting recommendations and the job of the community in terms of developing policy is also important.

But I don't disagree with you. I think the conversations during the process have to be clear. But I just do think there needs to be a formal articulation wherever there's an intent to change policy that that's what's—it can be a simple one line in a draft recommendation. Thank you.

SEBASTIEN DUCOS:

Thank you. I was having a few disruptions with my Internet connection. I'm sorry. Yeah, I think it's back. Lars.

LARS HOFFMANN: Thank you. I appreciate the Swedish pronunciation. Very good. Jeff, just a quick word generally on the processes. I just want to clarify, I don't think—when I say we need different processes made for different types of policies, I know that sounds like trying to complicate things.

But I think things can be quite streamlined. I think it's not about having a very complex process, how much oversight and accountability is involved is ultimately a decision for the community, obviously, but things can be very easy, very streamlined.

Jeff, you worked with us on the SubPro ODP as the Council liaison. We had an issue there, right, you may recall recommendation 9.1, there was essentially a typo in the recommendation which would have, if implemented as was, had a very big impact on the future round and would have meant that closed generics cannot happen. We posed it as a question to the Council, the Council came back and said this was a mistake, that it actually should read something instead of A to D, should read A to C, I don't want to bore everybody with technical details.

But it was essentially a change to a recommendation with a significant impact. If that had been discovered only during implementation, that would have been much more complicated to change that, because the Board would have already approved it.

So A, a small plug here for the ODP. But B, I think that process, if codified for after the Board having approved something could be

as straightforward in theory, right? We don't need necessarily something complicated, but I think predictability and transparency, as I said, is beneficial to everyone if something slips through the cracks. Thanks.

SEBASTIEN DUCOS: Thank you. And I see Jeff's hand raised to answer.

JEFFREY NEUMAN: Yeah, thanks. But Lars, I think you just proved why the process is not necessary. Because you did discover it. And we did handle it. And we were able to flex it with the ultimate amount of flexibility because we didn't have to follow a specific process where so many things are now documented. And now it becomes this regimented thing. We were able to handle it. I think that success of not having an additional process.

And I don't understand your point of it becomes more difficult once the Board approves it. I think that's a perception. If something's truly a typo, and the Board sends a question even after approved or staff sends a question, and we all agree it's a typo, why is that more difficult? Are we just telling ourselves it's more difficult?

I mean, not to degrade the Board, but they're not like an ultimate deity where once they pronounce something, nothing can change. Right? Even they recognize that. So I don't agree that we necessarily need a process.

I think Becky made a really great point about a line to put into a charter or a final report for PDP, maybe it's even in the charter,

that there's a question always that says, has the PDP examined whether this will affect other policies? And if so, can you please state how that is and what the next steps are? Or as Becky said, this is intentionally overriding another one.

I mean, I think these are great kind of little improvements without putting in another policy that everyone's going to weigh in on and say, okay, well, if we're going to create a group to look at this amendment, now we've got to have two members from each stakeholder group and advisory committee and we've got to give 20 days' notice, and then we have to have people appoint, time for people to be appointed. And then statements.

I mean, come on. Right? Lars, we handled that situation you discovered, and I think that was great. Let's just figure out how to move that earlier in the process if we can. And I think we'll solve 99% of the problems. And once we get to 100 consensus policies, and we have that one where we haven't solved it, we'll figure something out. Thanks.

SEBASTIEN DUCOS:

So if I may give you the mic, Lars, in a second. But I think that we're trying to fit into one box radically different problems that need to be solved. So it's obvious that it's not going to be the same box to fix a typo, even after it has been voted and agreed and commented and everybody missed it. And the same box that is going to resolve the issue of putting [inaudible], whatever you want to call it, a policy that took 10 years to develop. There is a huge world between the two. And maybe that's also where the difference needs to live. Lars, the floor is yours.

LARS HOFFMANN: Thank you, Sebastien. And Thanks, Jeff. I don't want to make this a dialogue. I don't want to push back and forth with Jeff on this. I think he and I actually agree very much. I think I'm delving maybe a little bit more into hypotheticals.

You're quite right, Sebastien. So there's a difference between what is essentially a typo and something that affects a long-term policy. And I think what I just want to add to that is that where the line of that lies is also not always clear. So in this example I gave, everybody agreed there was a typo.

What if that is not the case? And I know I'm spinning in hypotheticals, but I think it's at least worth thinking that through I feel, and there have been, obviously, issues in the past where there was different interpretation of whether something was or was not a typo, or something was meant this or another way.

And so having a way forward as simple as possible. I mean, Jeff, what you described about the complex processes, certainly, I can only speak for myself, not anything I would have in mind or think would be the most efficient way forward. But still thinking this through and putting a sleek and effective, predictable process into place, I don't think is a bad idea. And I'm going to leave it at that. I agree with most of what Jeff said. Thanks.

SEBASTIEN DUCOS: And for clarity, I assumed the typo wasn't just a typo, it was a "not" in a recommendation that would mean exactly the contrary to what it was intended to. Marika.

MARIKA KONINGS: Yeah, thanks, Sebastien, I think basically, agreeing with both what Lars said as well as Jeff. Of course, if it's a simple typo, everyone agrees it's very easy. That is something as well, you can document your process. But it doesn't add complexity or time. You just make clear what happens in those circumstances.

I think we're more looking at situations where maybe it's not exactly a typo but it is something where some believe it was maybe overlooked in the final report and the recommendation says something else what people thought it would say, and how we can then have that conversation.

And that is maybe something as well. And I think it's something that we're ready also have on the list of items to look at, for example, the role of the liaison to the IRT.

I think now the liaison only comes into play if there's a disagreement within the IRT or between the IRT and ICANN Org over the implementation. But maybe there could also be a process, for example how the liaison works in ODPs. It's kind of more minor issues, but where there's still a need to kind of let's have a loop back to the Council in case someone does believe that a change that's been made is more impactful than the IRT may think, that there is a way or transparency around it so someone can raise their hand and say, hey, I actually have a concern around this.

So I think there are other areas that the Council is already expected to look at, at some point, which is the IRT guidelines, the

role of the liaison to the IRT where I think there are further opportunities to maybe clarify some of the roles and responsibilities and not necessarily add additional process and additional complexity but just make it very clear and transparent what happens in a variety of circumstances.

Again, I think, from our perspective, that probably shouldn't add additional time and may actually do the opposite. Because it makes it clear for everyone what happens in certain situations, instead of maybe going around in circles and people having different ideas on who needs to approve or where something needs to go to be rechecked.

SEBASTIEN DUCOS:

Thank you, Marika. So I don't want to simplify the debate here. But what I seem to be hearing is from Jeff and Philippe earlier, from others, this sense that we shouldn't complicate the already extremely complicated process to develop our policy. And certainly goes way above my head.

And on the other hand, staff has also a legitimate point of view saying, well, we're trying to manage this for you guys, or help you manage this and etc. and we're finding ourselves from time to time in gray zones, not knowing exactly how to react to it.

And I guess it's a legitimate answer, but to what point that clarifying for staff support complicates the process for those that are trying to develop a policy, a lot of those that are volunteers that have limited time to be able to give through this process and so on, so forth. Thoughts on that?

I see an answer from Jeff who says that the response is that if a staff believes it needs clarification, to go to the Council. So do you want to develop on this? I'm not sure I understand.

JEFFREY NEUMAN:

Yeah, sure. This is in response to Ashley. Basically, there's a question. If there's a question on how something is interpreted, I think what's happening now, go to the Council, ask the question. I think the other thing that I kind of put in the chat is a lot of questions can be answered in the rationale of the recommendations.

I've always thought it was bizarre—and I only recently discovered this, by the way, so I really shouldn't say always, but it's bizarre to me that the only thing that's required to go to the Board are the recommendations themselves and not the final report, the whole report.

I don't know when that started. But we discovered it with SubPro, where the initial draft Board report only had the recommendations themselves. And when we inquired as to what about the rest of the report—Because remember, there's not just a final report that goes to the Board, but a Board report.

The Board report has become—I think what it was initially intended to be was a staff document to the Board on the risks and other things that maybe legal counsel puts in there for the Board to consider. What it ended up being, though, is, in a lot of cases, unfortunately, the sole document that the Board relies upon, because sometimes that's the only thing the Board's given.

If there's anything broken in that process, it's that the final report should speak for itself and that there shouldn't be a Board report that, again, restates the recommendations and then has other summaries. If the staff wants to add like legal opinion and all that stuff, cool. Do that. But the recommendations and the rationale in the report should not be rewritten or restated in any way. It should just be, here's the final report. And maybe here's the general counsel's view, which obviously is confidential and just to the Board, and that's cool. That's normal.

But the Board report now has become a restatement of the recommendations along with the other stuff. And I don't know why that is. But it's a long way of saying that in Lars's example where he came back to the Council with the question, all we did in the response is say yes, it's a typo, look at the rationale and you'd see that. That's it, it's not like we provided a new answer or did anything other than that.

So again, I think that A, you get more involvement from staff in the PDP and the Board so that we can discover a lot more issues and put in, as Becky said, kind of a requirement that if there is an impact on the consensus policies, what to do in that situation. And then let the Council just bring issues to the Council and we'll figure something out. Again, we've had one issue, rec 27, in 25 years where this has happened. Are we being a little over reactive in now having to come up with a policy? I don't know.

SEBASTIEN DUCOS: Any comments? Jeff, I tend to agree with you. I shouldn't if I'm managing here the mic. But yeah, so maybe for the proponents of

more process to explain better where we're going. I'm not quite sure that we're convinced. Marika.

MARIKA KONINGS:

Yeah, maybe on where we're going. And again, that may lead into some of the conversation we'll have with the Council as well. There are a number of very specific suggestions that were made in the paper. And as said, those are suggestions, and there may be others.

It would be helpful, and I think based on the conversation today, I haven't heard anyone significantly push back to those, again, from our perspective, those are working towards what everyone has spoken about on making sure that within the PDP there's ample opportunity and recognition of impact that may occur on other consensus policies.

So I think that the working group as well as liaisons are aware that it's their role as well to focus on those and call out if there are concerns. Obviously, Council is more attuned to this. I think we've already seen through recent experience, I think on SSAD, that more conversation between Board and Council already happens as well to fully understand what recommendations mean, what they're intended to do.

So I think there's already obviously, I think, a natural evolution that has happened, and, of course, lessons learned. But it probably would be helpful to hear—and people can of course think about that, if those specific recommendations, or suggestions are included in the paper, is it helpful to move forward with those?

As I think we identified in the PDP improvements paper, most of those are easy to do, it's making an update to the chart template, or Karen already mentioned liaison guidelines that are in the process of being developed that could call that out as well. I think it talks about having a section in the final report that specifically focus attention on impact on other consensus policy.

So in the context of this specific conversation, those are a number of suggestions. And I think, at least from the staff side, we would like to hear if at least there's support for those, it's something we can mark as such and basically get our marching orders to move on with those. Those are of little effort.

There are probably some other items that we already mentioned as well, CPIF was mentioned. We do have already on the projects list as well this review of the policy implementation recommendations, which include the IRT guidelines, and as well as the role of the Council liaison to the IRT, which is probably something that the Council at some point needs to plan for, because of course, all these issues are intertwined.

But at least again, from the staff side, I think we're hoping to get some specific feedback on or at least an indication that there is no significant concern at least about those proposed improvements that are easy to apply, don't require changes to existing processes and will hopefully avoid the rec 27 or rec 7 situation from occurring again.

SEBASTIEN DUCOS: Thank you, Marika. You certainly noted Steve DelBianco's support at the top of the hour. That was the first comment. And yeah, I guess that we'll discuss that on Council. I see John McElwaine's hand up.

JOHN MCELWAINE: Thanks. I just wanted to issue the same sort of support that Steve did to start. I believe that the recommendations in pages 10 through 12 here are good. I have an open mind for what Jeff has been talking about, let's not overly complicate things, but there's a lot of really good thought and processes that are set out here that are going to be easy to put in place that are common sense and will help avoid you know another rec 27 situation.

So I fully support that with an open mind that if somebody has in some of the details here an issue with one of them, that it is not wise or overly complicated, I will definitely consider that. but I think this is an excellent step forward. Thanks.

SEBASTIEN DUCOS: Thank you for that. I hope Marika's counting this second tick. Oh, I see Theresa's hand. Go ahead, Theresa.

THERESA SWINEHART: Yeah, this is a really good conversation, and I think building on Marika's point and also what some of the comments have been, one thought is that we could come back with some ideas around the areas identified in the paper. But also, given the thoughtful discussion here, maybe there's some additional ideas from this

call, and we could identify those and have another call and then share those ideas specifically with regards to the items identified in the paper as a path forward for this conversation.

So if it's helpful, we're happy to come back with some more specific suggestions. But there might also be some specific suggestions that we could build on here, again, to keep things simple and streamlined. And I know we use the term modifying but maybe also, it's just evolving things and providing some clarity in existing processes that we do have to identify and address transparently some of the areas that we've been discussing here.

So it's just a thought for moving this conversation and really engaging in the thoughtful discussions. I think part of this is the consensus policy is really the community coming together and reaching alignment on things, and trying to be fully respectful as we evolve these policies that we transparently are addressing some of these areas while ensuring that the consensus policy is really retained from that standpoint.

So the example of the clarifying question or a typo is one, but I think, Sebastien, you had also outlined that sometimes it's not just a typo, sometimes it's a broader disagreement around something. And so we want to make sure that we're distinguishing among those things as we evolve this in a clearer way. So maybe that's a helpful path forward for this. And I like the idea of a conversation. I think that's very helpful.

SEBASTIEN DUCOS: Thank you. I like the idea of conversation too. But having tried this model a few times this year, this past few months, I think it's very good. I miss you all. So just out of memory, sorry, I'm blanking out here. But there was a planned discussion on Council. I can't remember exactly when it is and just in terms of timeline, if that is worth maybe us having that conversation first. And then maybe going back to you, Theresa, afterwards, for further comments. Philippe.

PHILIPPE FOUQUART: Thank you, Sebastien. Thanks, Theresa. If that's timely, I think we discussed this extensively, it's probably time for us to wrap up now. So in that regard, I think there were many good ideas shared during this call. I just noted a couple of them. Even if I think we all have various use cases in mind, and that's the difficulty with trying to fit one model with various examples, and that's the challenge, whether that's rec 7 or rec 27 or whatever

I note the critical role of the liaison for which there are quite a few incremental improvements in the paper. And we'll work on that, including the need for that liaison to help with the identification of the backward compatibility issue with accrued recommendations. And the third note was essentially the need for transparency, both for the Board and the broader community.

So with the next steps, I think we've got indeed a discussion plan at Council during our May call. So in the paper from the staff—and I'm referring to the various incremental improvements during the various stages that you shared.

The original intent was to ask Council to consider them at the next call. But certainly, if Theresa, you and your team would like to go back on them in light of this discussion and trying to review them, what we can do is that we will have that discussion anyway with a view to somehow weighing in, at some point, maybe in June, at a later stage, but we'll have that discussion. That's going to be useful.

But in the meantime, in light of what we discussed today, Theresa, if you'd like to go back to the paper and further refine those improvements, I think that'd be welcomed. We'll do that in parallel with a view to—approving may be a strong word, but weighing in in June on those incremental changes that are put forward, if that's acceptable. So with this, I think we have more or less a way forward. Sebastien, anything else that you'd like to add?

SEBASTIEN DUCOS:

No. That sounds like a plan [from what you said.] Again, if we have—so Marika added in the chat that the meeting was on the 19th. I assume that means that closing deadline for additional documents is next week. So I don't know how much you will have time to dig into this, Theresa, but we'll have the conversation anyway. And with no view to taking a decision in two weeks, but to schedule that for later. So feedback is welcome anywhere. I see Marika's hand, and then Theresa's.

MARIKA KONINGS:

Yeah, thanks, Sebastien, just want to clarify as well, the conversation on the 19th is really about the approach to take and

if there is support for using this kind of tracker to list all the specific suggestions that are being made, and also kind of categorize them. And then if there is support for moving forward also, of course, identify who's responsible for implementing those and the expected timeline for doing those.

And, of course, it's not a kind of closed list. So maybe just to reassure Theresa and my other colleagues, it's not that if a suggestion is not in by the 19th of May, it will not get considered. At least from our side, we see this as a continuous process of improvements that may come up through the different conversations.

The idea behind the tracker is we need to make sure that there is connection between these different conversations, as they all, of course, impact the overall process. And we need to make sure that there's no conflict between what is being proposed and that everyone's able, as well, to see what is being suggested and what is being worked on. And in addition as well, as mentioned before, for the Council to kind of have a kind of preview of the work that's also in the pipeline that touches on these and plan for that accordingly.

As I've mentioned before, I think we've deferred work on the review of the policy and implementation recommendations a while back, but it does seem that it becomes maybe more pertinent to at least schedule that in and plan for that and also discuss the approach to do that, to make sure that it's as efficient and effective as possible. And of course, all these conversations, I think, assist with that. So I just wanted to make sure that that was [inaudible].

SEBASTIEN DUCOS: Thank you, Marika. Theresa, go ahead.

THERESA SWINEHART: Just to add on to Marika's point, just so there's no confusion, we're not going to modify the October paper, just so there's no confusion. It's more building on some of the ideas from this discussion and sharing that into the conversation. So just so there's no confusion around that. It's a thought paper and that's what it's intended for. Thanks.

SEBASTIEN DUCOS: Thank you. Given this and all the comments we've heard, Philippe, did you have anything else you wanted to add? Or Theresa, before we give everybody the rest of the day.

PHILIPPE FOUQUART: Not quite. Just want to thank you, Sebastien, for leading this, and thanks, everyone, for their good comments. And give the last word to Theresa, then. Thanks.

THERESA SWINEHART: Just a big thank you, everybody, for this thoughtful conversation. I really appreciate the open dialogue around it and I think Philippe, as you said early on in the chat, it'll be lovely at some point to also be able to do it in person, hopefully. Thanks, everybody.

SEBASTIEN DUCOS: Thank you. We can stop the recording. Have a good rest of the day, everyone.

NATHALIE PEREGRINE: Thank you all for joining. This concludes today's call. Have an excellent rest of your days and evenings. Take care, everybody. goodbye.

[END OF TRANSCRIPTION]